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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------|------------------|
| 09/934,016 | 08/20/2001 | David Scott Gray | PGRACT | 7568 |
| 7590 | 04/21/2006 | | EXAMINER | |
| Thompson E. Fehr Goldenwest Corporate Center Suite 300 5025 Adams Avenue Ogden, UT 84403 | | | LOPEZ, AMADEUS SEBASTIAN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3743 | |
| | | | DATE MAILED: 04/21/2006 | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/934,016 | GRAY, DAVID SCOTT |
| | Examiner | Art Unit |
| | Amadeus S. Lopez | 3743 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 January 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 3-6, 10 and 11 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 3-6, 10 and 11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see pages 4-6, filed 1/23/2006, with respect to the rejection(s) of claim(s) 3 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of U.S. Patent No. 5357951 to Ratner in view of US Patent No. 5996579 to Coates.
2. Applicant's arguments, see pages 4-6, filed 1/23/2006, with respect to the rejection(s) of claim(s) 4-6 and 11 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of US Patent No. 5357951 to Ratner in view of US Patent No. 4106502 to Wilson.
3. Applicant's arguments, see page 7 and 8, filed 1/23/2006, with respect to the rejection(s) of claim(s) 10 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of US Patent No. 5357951 to Ratner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by US

Patent No. 5357951 to Ratner. With regards to claim 10, what is taught and shown by Ratner in figs. 1, 2, 3, and 5 is a medical port for an emergency safety resuscitator having a collapsible bag (66) with an outlet, which comprises: a tube having a first aperture (60) for communicating with a collapsible bag (66) of a resuscitator (column 3, lines 31-36), a second aperture (46), a third aperture (22) available for connection to a mask (24; Fig. 1 and 5) or an endotracheal tube, and an inside; two or more flexible strips (42; inherent that strips are flexible if the tips of the strips can touch to close off the third aperture or move away from each other to allow fluid passage through the third aperture; also in column 3, lines 55-59, Ratner states that “the diaphragm 38 is constructed of a flexible polymer.” From Figs. 2 and 3, it is shown that diaphragm 38 is in fact integral with valve strips 42 and therefore it is inherent that the valve strips are also made of the same flexible polymer or plastic), each strip having a first end attached to the inside of said tube, between the first aperture and the second aperture, and a second end pushing against a second end of at least one other of said strips (See figures 2 and 3 where it is shown that the strips are two separate pieces that are attached to the inside walls of the tube).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5357951 to Ratner in view of US Patent No. 5996579 to Coates.

6. With regards to claim 3, what is taught and shown by Ratner in figs. 1, 2, 3, and 5 is a medical port for an emergency safety resuscitator having a collapsible bag (66) with an outlet, which comprises: a tube having a first aperture (60) for communicating with a collapsible bag of a resuscitator (column 3, lines 31-36), a second aperture 46, a third aperture (22) available for connection to a mask (24; Fig. 1 and 5) or an endotracheal tube, and an inside; two or more flexible strips (42; inherent that strips are flexible if the tips of the strips can touch to close off the third aperture or move away from each other to allow fluid passage through the third aperture; also in column 3, lines 55-59, Ratner states that "the diaphragm 38 is constructed of a flexible polymer." From Figs. 2 and 3, it is shown that diaphragm 38 is in fact integral with valve strips 42 and therefore it is inherent that the valve strips are also made of the same flexible polymer or plastic), each strip having a first end attached to the inside of said tube, between the

first aperture and the second aperture, and a second end pushing against a second end of at least one other of said strips (See figures 2 and 3 where it is shown that the strips are two separate pieces that are attached to the inside walls of the tube). What is not disclosed by Ratner is a self sealing membrane releasably covering the second aperture of said tube. Coates et al teach a medical port having a tube that includes a self-sealing membrane 34 releasably covering an aperture to provide an airtight seal before and after the introduction of medicament via a syringe/needle. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a releasable self-sealing membrane to the second aperture of Ratner so that there is an airtight seal before and after the introduction of medicament via syringe/needle. Furthermore, such a sealing membrane would prevent debris from collecting into the aperture while not in use with the suction catheter.

7. **With regards to claim 6,** the above combination teaches a medical port wherein the self-sealing membrane is siliconized. Please note that Coates et al teach the self-sealing membrane to be made of rubber and as such the examiner considers the recitation to read on siliconized as it is well known that rubber can come in the form of siliconized rubber.

8. **Claims 4, 5, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratner/Coates et al as applied to claim 3 above, and further in view of US Patent No. 4106502 to Wilson.**

9. **With regards to claims 4 and 11,** the above combination of Ratner/Coates et al teaches essentially all of the limitations except for wherein the tube is constructed of

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clear plastic. However, Wilson does teach the use of a clear plastic for the construction of a tube so that the tube is lightweight and allows for internal viewing or visibility (Col. 1, lines 50-54). Therefore it would have been obvious to one of ordinary skill in the art to modify the tube of Ratner and construct the tube of a clear plastic so that the tube is lightweight and allows for internal viewing or visibility.

10. **With regards to claim 5,** the above combination teaches a medical port wherein the self-sealing membrane is siliconized. Please note that Coates et al teach the self-sealing membrane to be made of rubber and as such the examiner considers the recitation to read on siliconized as it is well known that rubber can come in the form of siliconized rubber.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amadeus S. Lopez whose telephone number is (571) 272-7937. The examiner can normally be reached on Mon-Fri 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Amadeus S Lopez
Amadeus S Lopez
Examiner
Art Unit 3743
April 4, 2006

ASL

Henry Bennett
Henry Bennett
Supervisory Patent Examiner
Group 3700